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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/2007  
LAST UPDATED 3/15/2007

SPONSOR Rawson HB \_\_\_\_\_

SHORT TITLE Prohibit Certain Eminent Domain Uses, CA SB SJR 3/aSfI/a HVEC

ANALYST Schuss

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with/Relates to: HB 159, HB 370, HJR 1

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HVEC Amendment

The amendment proposed by the House Voters and Elections Committee reinstates previous language to Subsection A, which now reads:

Private property *shall not* be taken or damaged for public use *without just compensation*.

The amendment adds private utilities to public utilities in reference to those that must make just compensation.

The amendment replaces the word *profitable* with *economic* in reference to the transfer of property from one owner to another in Subsection C.

#### Synopsis of SFI Amendment

The first Senate Floor amendment to Senate Joint Resolution 3 adds rural electric cooperatives to Subsection A, which states:

Private property may be taken or damaged for public use only upon payment of just compensation:

(1) by public agencies when necessary for the possession, occupation or enjoyment of land by the public at large; or

(2) by public utilities, *rural electric cooperatives*, pipeline common carriers or those seeking to put water to beneficial use.

### Synopsis of Original Bill

Senate Joint Resolution 3 amends Article 2, Section 20 of the Constitution of New Mexico to specifically *allow* for the taking of private property upon payment of just compensation by public agencies when necessary for the possession, occupation or enjoyment of land by the public at large and by public utilities, pipeline common carriers or those seeking to put water to beneficial use. The Resolution specifically *prohibits* the taking of private property for use by a private commercial enterprise for economic development or any other private use, except with the consent of the owner, and *prohibits* the taking of private property from one owner to be transferred to another, on the grounds that the public will benefit from a more profitable private use. SJR 3 must be submitted to the voters for approval or disapproval at a general election.

### **FISCAL IMPLICATIONS**

The Administrative Office of the Courts (AOC) notes that there will be a minimal administrative cost for statewide update, distribution, and documentation of constitutional changes. Any additional fiscal impact on the judiciary would be proportional to passage of this amendment and resultant proceedings. Such proceedings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **SIGNIFICANT ISSUES**

The Attorney General's Office (AGO) states that presumably this bill is in response to the United States Supreme Court decision in *Kelo v. City of New London*, 545 U.S. 469 (2005). On July 23, 2005 the Supreme Court, by a 5-4 decision, allowed the City of New London, Connecticut to exercise its power of eminent domain to condemn privately owned real estate so it could be used as part of a comprehensive redevelopment plan. The decision was based upon the city's desire to address its economic downturn by allowing the New London Development Corporation, a private entity under the control of the city government, to revitalize the "Fort Trumbull" neighborhood after Pfizer Pharmaceuticals began to build a large research facility on the outskirts of that neighborhood. The corporation offered to purchase the properties involved, but the owners of 15 out of 115 lots refused to sell. The City exercised its power of eminent domain and condemned the holdout lots. The Supreme Court upheld the City's action.

The dissent, authored by Justice O'Connor, and subsequent criticism of the case, suggested that the use of this power in a reverse Robin Hood fashion—take from the poor, give to the rich—would become the norm, not the exception. She stated: "*Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms.*"

Several states are considering banning "takings" as authorized by *Kelo*. However, New Mexico

specifically allows a city to exercise its power of eminent domain to address “slum clearance and development”. NMSA 3-46-1 to 3-46-45 1978 comp.

The AOC notes that in the final paragraph of the majority’s opinion in the *Kelo v. City of New London* case, Justice Stevens wrote:

In affirming the City's authority to take petitioners' properties, we do not minimize the hardship that condemnations may entail, notwithstanding the payment of just compensation. ***We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.*** [Emphasis added.] Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. As the submissions of the parties and their amici make clear, the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate.

**Note:** The U.S. Supreme Court declined on Tuesday, January 16, 2007, to revisit or limit its 2005 ruling in *Kelo* upholding governmental power to exercise eminent domain for economic development.

## **PERFORMANCE IMPLICATIONS**

The AOC states that the courts are participating in performance-based budgeting. It appears that passage of this constitutional amendment could lead to increased litigation regarding the appropriate taking of private property and thus may have an impact on the measures of the courts in the following areas:

- Cases disposed as a percent of cases filed
- Percent change in case filings by case type

## **CONFLICT, RELATIONSHIP**

Conflicts with/ Relates to HJR 1, HB 159 and HB 370

## **TECHNICAL ISSUES**

The AOC notes the following technical issue:

It is unclear in Section 1.A. (2) whether public utilities that take private property must be “common carriers...seeking to put water to beneficial use” or whether the allowance extends to “public utilities, [and/or] pipeline common carriers, [and/or] those seeking to put water to beneficial use.” Does the ability to take private property extend to *private* pipeline common carriers and to *private* parties seeking to put water to beneficial use?

The AOC suggests that Section 1.A. (2) of SJR3 should clarify who may take private property.

BS/mt